

## OBTAINING A RIGHT-OF-WAY IN THE VALE DISTRICT

### I. General Information / Introduction

The BLM places a high priority on working with applicants on proposed ROW's to provide for the protection of resource values and to process applications expeditiously. This handout is designed to acquaint you with this process. A more complete explanation of the BLM ROW program is found in Title 43 of the Code of Federal Regulations, Parts 2800 and 2880. Copies of these regulations are available at all BLM offices, in most public libraries, and on the Internet at: [www.access.gpo.gov](http://www.access.gpo.gov).

ROW applications take time to process depending on the complexity of a proposal and already existing workloads. Careful advance planning with BLM personnel who will be handling your application is the key to success. If they know about your plans early, they can work with you to tailor your project to avoid many problems and costly delays later on in the process. You must use a Standard Form 299 to file an application.

Each year, thousands of individuals and companies apply to the Bureau of Land Management (BLM) to obtain a ROW on public lands. A ROW grant is an authorization to use a specific piece of public land for a certain project, such as roads, pipelines, transmission lines, and communication sites. The grant authorizes rights and privileges for a specific use of the land for a specific period of time. Generally, a BLM ROW is granted for a term commensurate with the life of the project. Typically, grants are issued with 20-year terms, and most can be renewed.

In general, BLM does **not** authorize the **exclusive use** of public land with a ROW grant. Many times, ROW grants will overlap with other compatible uses and users, including the general public's use of public land. These other uses within your ROW may have to be authorized by the BLM with a separate ROW grant. For example, utilities buried in a road ROW may need a separate ROW.

#### **When You Do... and When You Don't... Need A ROW**

As a general rule, **you do need a ROW whenever you wish to build a project on the public lands.** Some examples of land uses which require a ROW grant include: Transmissions lines, communications sites, roads, highways, trails, telephone lines, canals, flumes, pipelines, reservoirs, etc.

**You don't need a ROW for so-called "casual use."** Activities considered "casual use" include: driving vehicles over existing roads, sampling, surveying, marking routes, collecting data to prepare an application for a ROW, and performing certain activities that do not cause any appreciable disturbance or damage to the public lands, resources or improvements. Make sure to contact the BLM office for help in determining if your project is considered "casual use." Please don't assume.

### II. Steps to Initiate a New ROW

**First:** Contact the BLM Field Office with management responsibility for the land where the ROW is needed.

**Second:** Arrange a pre-application meeting with the Field Office Realty Specialist to discuss necessary requirements and to answer questions. Please call ahead to arrange a date and time.

**Third:** When you have all the information, bring or mail the application, along with the non-refundable application processing fee, to the BLM office.

### **III. Completing the Application Form SF-299**

Directions for completing the application are included on the form; however, the following supplemental instructions may also assist you. **Incomplete information is often the reason application periods are unnecessarily delayed.**

**Item 6--**This applies only to oil and gas pipelines. Applicants must be citizens of the United States.

**Item 7--** This is where you address all the details of what you need and how you plan to accomplish it. Be as specific as possible in describing the project, its location, and dimensions. Include the legal description of the affected public land. Attach separate sheets as necessary, since the space in this block is limited. You may wish to follow the Plan of Development (POD) outline (following the application form) to complete this section. This outline should help you thoroughly describe your project and its associated impacts. You should also describe and apply for a Temporary Use Permit for any extra construction width you may need.

#### **TEMPORARY USE PERMIT (TUP)**

Keep in mind that **all activities associated with the construction, operation and termination of your ROW must be within the specified limits of the authorization.** Because of this, you may need to apply for a TUP to authorize additional temporary space for construction, stockpile of excess material, parking of equipment or storage of construction material, such as pipe or gravel.

**Item 7** on the ROW application is where you would identify your need for the use of additional land during the construction phase of your project. This additional land may be necessary for construction, stock piling of excess materials, equipment parking, etc. if additional land is required during construction, you will need to apply for a TUP.

This TUP can be authorized for up to 3 years; granting a term of this length generally allows the holder of the ROW adequate time to complete any stipulated requirements for restoration of disturbed land. TUP needs should be discussed during the pre-application meeting.

YOU CAN apply for a TUP at the same time as you apply for a ROW by describing its dimensions, locations, and term needed in item 7 of the standard ROW application (SF-299), or by describing it in your Plan of Development. You may also apply for a TUP after your ROW has been granted; in this case, you would use a separate SF-299 form, and would pay additional processing/monitoring fees for BLM to process the TUP. This might require a separate environmental clearance and take additional processing time.

**The Bottom line: If there is a possibility that you may need extra construction width or space, it is best to identify this in your ROW application.**

**Item 8**--Attach a map (BLM intermediate scale map, 1:100,000; U.S. Geological Survey quadrangle; aerial photo, survey drawing, digital map; or equivalent) showing the approximate location of the proposed ROW and facilities on public land and existing improvements adjacent to the proposal. Only improvements that may directly affect the proposal need to be shown on the map. Include the township, range, section, and a north arrow.

**Item 9**-- You do not need to submit documentation of other approvals at the time of application. However, the authorized officer may require other agency approvals prior to processing.

**Item 10**-- Application fees are discussed in the Costs and Fees section. You will be notified by formal decision letter of the fee category determination for your application.

**Item 12**-- You must have the technical and financial capability to construct, operate, and maintain your ROW project. The BLM Authorized Officer may require that you post a performance bond or that you hire a registered engineer, depending upon the scope and complexity of your project.

**Item 13-18**--The more information you can provide in these sections will facilitate processing your application.

**Item 19**--It is **mandatory** to provide information related to the use or transportation of any hazardous materials. Simply writing in "N/A" in this block is not satisfactory.

**Signature block**--If someone is acting as your authorized agent and you want them to sign the application or grant on your behalf, a resolution to that effect must be filed with application.

**Supplemental**--The supplemental page is to be completed for each application involving corporations or partnerships. If this information has been previously submitted with another BLM ROW application or grant, provide office and file identification numbers.

#### **IV. Costs and Fees**

There are **three different fees** involved with a ROW grant:

**1. Application Fee:** The first fee is a one-time non-refundable application fee to reimburse the United States for the cost of processing your application. The processing fee must be paid when you receive notification of the fee determination after you file your application. **ROW processing cannot begin until the fee is paid.** BLM will use the information contained in your application and presented during the pre-application meeting to determine this fee. Sometimes the appropriate fee can be determined at the pre-application meeting, and the fees can be filed with the application.

**2. Monitoring fee** -- The second fee is a one-time fee to reimburse the United States for the cost of monitoring compliance with the terms and conditions of your ROW grant. BLM will monitor your

construction, operation, and maintenance of the ROW until termination of the ROW grant. If the anticipated monitoring costs exceed a certain amount, the applicant will be required to reimburse the United States for the actual monitoring costs.

**3. Rental** -- The third fee is an annual rent for your use of public lands. The rent for linear ROW grants is established from an administrative schedule based roughly on land values in the project area and the amount of land occupied. These linear rates fluctuate slightly on an annual basis tied to a market index. For communication sites, a separate administrative schedule is used. In some cases, the rental is established by an appraisal.

Certain applicants, such as governmental entities or other federal agencies are not subject to these fees. Other exemptions, waivers, or reductions in the application and/or rental may apply and can be explained by BLM officials during the pre-application meeting.

**A base application consists of a completed application form (Standard Form 299), map, and the non-refundable cost reimbursement application fee. If an estimate of the monitoring fee is supplied by the BLM, this fee may be paid at the same time.**

**Application and Monitoring Fee Schedule:**

Category	Application Fees
I.....	\$125.00
...	300.00
II.....	550.00
...	925.00
III.....	See 43 CFR 2808.3-1 (c-1)
...	As required
IV.....	
...	
V.....	
...	

Category	Monitoring Fees
I.....	\$50.00
....	75.00
II.....	100.00
...	200.00
III.....	As required
....	
IV.....	
..	
V.....	
...	

\*These fees may be adjusted annually.

**For Right-of-Way information concerning the Malheur or Jordan Field Offices, please contact the Realty Specialists in the:**

**Vale District Office, BLM  
100 Oregon Street  
Vale, Oregon 97918  
(541-473-6249)**

**and**

**for information concerning the Baker Field Office, please contact the Realty Specialists in the :**

**Baker Field Office, BLM  
3165 10<sup>th</sup> Street  
Baker City, Oregon 97814  
(541-523-1256)**

#### **V. Application Processing Steps**

<b>Responsible Party</b>	<b>Step</b>	<b>Action</b>
Applicant	1	Completes draft SF-299 application form
Applicant	2	Contacts BLM Realty Specialist to arrange a preapplication meeting.
BLM Field Office	3	Holds preapplication meeting, identifies land use constraints and conflicts, determines processing fees, identifies and requests additional information needs as appropriate
Applicant	4	Finalizes application and submits to appropriate Field Office
BLM Field Office	5	Serializes application, requests fees if not already paid, assembles case file
BLM Field Office	6	Initiates necessary clearance/inventories requests, *consults with affected interests (local and/or Tribal government, other users), performs all inventories, clearances, other on the ground work, completes all inventory reports, environmental analysis, stipulations, public notification, Field Office Manager approves Decision Record, drafts ROW grant, determines rent, prepares decision letters, mails offer of grant to applicant
Applicant	7	Accepts stipulations, signs and returns grant and any rent payment to BLM
BLM Field Office	8	BLM signs the ROW Grant
ROW Holder	9	Notifies BLM of planned construction start. Arranges preconstruction conference.

\* Scheduling of field inventories is often dependent upon seasonal uncertainties. For example, cultural resource inventories cannot be completed with snow cover; certain threatened and endangered (T&E) species botanical clearances can only be completed during short windows of opportunity in the spring when the plant may be blooming; certain areas are closed to winter or spring activities to reduce impacts to sensitive wildlife species. These restrictions may have a significant effect on processing timeframes.

**You should be aware that a right-of-way application may be denied for several reasons, which may include :**

- the proposal is inconsistent with the purpose for which the public lands are managed;
- the proposal is not in the public interest;
- the proposal is inconsistent with Federal, State, or local laws;
- the applicant is not technically or financially capable of accomplishing the project;
- the proposal would result in serious environmental impacts that cannot be mitigated.

#### **PROCESSING A ROW APPLICATION**

Once you have filed an application, the BLM will review it to make sure all necessary information has been included. The application is then evaluated to determine the probable impacts of the activity on the social, economic, and physical environments. The BLM will also check to see if the proposed ROW is consistent with the existing land use plan, and will check to see what valid existing rights currently exist on the lands in question.

#### **APPEAL RIGHTS**

If the application is denied, the official written notice will give the reasons for the denial and information on how to file an appeal, should you so desire.

#### **LIABILITY**

The holder of a right-of-way grant is responsible for damage or injuries in connection with the holder's use of the ROW. The holder indemnifies or holds harmless the United States Government for third party liability, damages, or claims arising from the holder's use and occupancy of the ROW.

#### **APPLICANT CONTRIBUTIONS TO PROCESSING**

ROW applications often compete against other land use applications and other priority workloads. For this reason, applicants may have to wait for extended periods of time for the BLM specialist to complete required inventories. Other points to consider are weather and season of the year. Processing of an application may come to a standstill waiting for a clearance. For example, if you filed an application late in the fall and the BLM archaeologist already had other workloads committed for that year, the archaeologist may not be able to get to your clearance prior to snowfall and the application may be delayed until the next summer.

One option you may wish to consider is contracting with qualified individuals or firms to perform required inventories, or environmental analysis, when the BLM has other competing workloads. The BLM does accept the work of certain qualified individuals and firms that hold permits to do cultural resources and T&E inventories on the public lands. These firms do field inventory and write reports for BLM approval. This can often significantly reduce the processing time for your application. These items should be discussed with the BLM at the pre-application meeting. You may want to check with the BLM before hiring a contractor.

#### **YOUR RESPONSIBILITIES AS A ROW HOLDER**

Once you have an authorized ROW grant, you can proceed with your plans. However, there are a number

of responsibilities you should keep in mind. Included in the grant are terms and conditions, and special stipulations unique to your ROW, with which you must comply. If you have questions as to what is and is not authorized, contact the BLM Realty Specialist. In addition, you have some responsibilities as follows:

- ◆ **You must keep the BLM office aware of any changes in address, name, or ownership**
- ◆ **You must notify the BLM of any proposed changes in the use of your ROW...**for example, from a single-family dwelling access road to a subdivision multi-family or commercial access road. In a situation such as this, you will probably need to apply for an **amendment** to your ROW. An amendment is also needed to add additional utilities (pipelines, phone cables, power cables, etc.) To an existing ROW, to authorize year around use for a road which had been authorized for only seasonal use, or for a minor construction change such as adding culverts or rerouting a road.
- ◆ If you plan to sell your private property, and/or sell your facilities to another company, you should contact the BLM about **assigning** your ROW to the new owner. **A BLM ROW DOES NOT automatically transfer with the sale of the land.** In fact, you are still responsible for maintenance, rental, etc., on the ROW until it is **assigned** to the new owner. The new owner would need to apply for an **assignment** of your ROW; and any change in use may require an amendment to the ROW as well.

The following questions and answers help explain these responsibilities.

**Q. How do I handle removal of resources like timber?**

**A.** If there are any marketable products (such as timber) that have to be removed before construction can begin, you may be required to purchase them under a separate contract.

**Q. If I want to substantially change, improve, or add to my project once I have a ROW grant, do I have to get BLM's approval?**

**A.** Yes. You must file an application to amend your ROW grant and receive prior written approval from the BLM for any substantial change in location or authorized during construction, operation, or maintenance of the ROW. Contact the Filed Manager or Realty Specialist to determine if your proposal changes are substantial

**Q. Will the BLM inspect my project?**

**A.** Yes. The BLM may inspect your project for compliance with the terms and conditions of the grant. In addition, the BLM reserves the right to access onto the public lands covered by the ROW grant and, with reasonable notice to the holder, the right of access and entry to any facility constructed in connection with the project.

**Q. If the BLM is not satisfied with the way I use my ROW, what can the agency do?**

**A.** A ROW holder may use the ROW for only those purposes permitted in the grant. The BLM may suspend or terminate a ROW if the holder does not comply with the applicable laws, regulations, terms, or conditions. The BLM may require an immediate temporary suspension of activities within a ROW to protect the public health and safety or the environment.

**Q. Can I transfer my ROW?**

**A.** Yes, with BLM approval. A transfer of your ROW is called an assignment. You must submit, in writing, the proposed assignment of all or part of a ROW to the BLM, along with a non-refundable payment of \$50.00. The assignment to the new owner is not legally recognized by the United States until it has been approved in writing by the BLM. If the new owner is qualified and agrees to be bound by all of the requirements of the ROW grant, the BLM will approve the assignment.

**Q. Do I need a ROW if I use an existing authorized ROW facility for my communication site use?**

**A.** The ROW regulations, 43 CFR Part 2800 et al.; published November 13, 1995, reduced the administrative burden on the communications industry and the government by reducing paperwork, and eliminating the requirement that all communication site users have authorizations; the new regulations require that only building owners have authorizations.

**Q. How does the BLM calculate rent for communication uses?**

**A.** The BLM calculates rent on the number of actual uses in the facility. For a stand alone facility, the base rent is the schedule rent for the facility owner's use for the population served. For multiple use facilities the base rent is the highest schedule rent in the facility for the population served, plus 25% of the schedule rent for all other tenant uses, unless the agency waives or exempts those uses.

**For more information about ROW's contact the BLM office in your area, or you can obtain a listing of BLM State Offices on the internet at: <http://www.blm.gov>.**

**See attached pages for an outline for a Plan of Development**



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## **ROW PLAN OF DEVELOPMENT (outline)**

### **1. Description of the Facility (e.g., road, pipeline, utility line, etc.)**

What is to be built? What will it be used for? Why is it necessary to use public lands? When do you propose to construct? Specify duration and timing if known. How long is the authorization needed?

## **II. Design Criteria**

The degree of design must be compatible with the proposed use and anticipated environmental impacts. All disturbances must be within the boundary of the ROW.

### **A. Road Specifications**

- ◆ Length and width of ROW
- ◆ Width of road surface
- ◆ Maximum grade of road
- ◆ Minimum/maximum clearing width
- ◆ Cut/fill slope ratios
- ◆ Type and location of drainage structures
- ◆ Cattle guards, fences, gates
- ◆ Proposed surfacing (gravel) type and quantities
- ◆ Dust abatement
- ◆ Centerline survey plat
- ◆ Design drawings including:
  - ◆ Plan and Profile sheets
  - ◆ Typical roadway cross-sections
  - ◆ Culvert installation details
  - ◆ Grade dip detail (water bars, rolling dips, etc.)
  - ◆ Cattle guard, fence and gate details
- ◆ Construction specifications
- ◆ Materials specifications

### **B. Pipeline Specifications**

- ◆ Length and width of ROW
- ◆ Diameter of pipe and type of material
- ◆ Depth of pipeline
- ◆ Size if trench
- ◆ Construction access requirements during and after construction
- ◆ Construction equipment requirements
- ◆ Survey plat
- ◆ Site specific engineering surveys for critical areas
- ◆ Cathodic protection site, valve stations, compressor stations

### **C. Power Line Specifications**

- ◆ Length and width of ROW
- ◆ Size, number and type of conductors
- ◆ Height and size of tower/poles
- ◆ Vegetation clearance requirements

- ◆ Raptor proof design
- ◆ Construction access and equipment requirements
- ◆ Transformers, substations, anchor locations, pulling sites
- ◆ Marker ball installations

**D. Communication Site Specifications**(pertain to non-linear sites)

- ◆ Site dimensions
- ◆ Size of all structures (building, towers, guys)
- ◆ Site design plan
- ◆ Utility requirements (power, phone)
- ◆ Access requirements during and after construction
- ◆ Technical data report including specifications of equipment, frequency of transmissions
- ◆ FCC license
- ◆ Compatibility with other users

**III. CONSTRUCTION OF THE ROW FACILITY.** Most surface disturbing activities associated with ROW occur during this phase of the project. The following components have been found to be common to most ROW construction projects. These items, where relevant, should be carefully described in the plan of development.

**A. Flagging and Staking the ROW.**

- ◆ Stake centerline and/or the exterior limits of the ROW
- ◆ Construction staking, cut and fill areas, clearing limits

**B. Clearing and Grading of the ROW.**

- ◆ State how much topsoil will be saved, show where it will be stockpiled and how it will be spread
- ◆ Describe disposal of all woody vegetation (trees, stumps and brush) cut on the ROW

**C. Earthwork**

- ◆ Engineering and quality control
- ◆ Excavation and placement of embankment
- ◆ Borrow material sources
- ◆ Removal of structures and obstructions
- ◆ Disposal of unsuitable excavated materials (e.g. oversize rock, weak soils, etc.)
- ◆ Soil erosion and water pollution control measures

**D. Structure Installation**

Describe how improvements will be constructed ie., constructed on site, prefabricated and delivered to site, concrete cast-in-place, precast concrete, etc.

**E. Stabilization, Rehabilitation and Revegetation**

**1. Soil replacement and stabilization. (Explain how soil will be stabilized in the project area).**

- ◆ Re-contouring all disturbed areas to restore original contours
- ◆ Placement of waterbars and/or other erosion control structures

**2. Seeding Specifications**

- ◆ Seed mixture (certified, noxious weed free seed required)

- ◆ Rate, method, schedule for seed application
- ◆ Application of mulch (straw, burlap, hydromulch) and locations
- ◆ Application of fertilizer (type, location, rates)
- ◆ Criteria for determining success of re-vegetation

#### **IV. OPERATION AND MAINTENANCE OF THE FACILITY**

- ◆ Describe what maintenance is required and anticipated level of use
- ◆ When will scheduled maintenance be performed
- ◆ Snow removal
- ◆ Pesticide Use Proposal-application to BLM describing plans for controlling noxious weeds

#### **V. TERMINATION AND ABANDONMENT**

- ◆ Removal of facilities
- ◆ Reclamation of disturbed areas
- ◆ Written plan required

#### **VI. MISC. INFORMATION NEEDS**

##### **A. Waste Disposal**

- ◆ Trash, construction debris
- ◆ Solid waste disposal
- ◆ Hazardous waste

##### **B. Traffic Control Plan**

- ◆ Barricades
- ◆ Construction signs
- ◆ Flag-persons

##### **C. Safety Plan for employees, contractors, general public**

##### **D. Fire Prevention Plan**

##### **E. Spill Prevention and Contingency Plan**

- ◆ Preventive measures
- ◆ Notification of proper authorities
- ◆ Incident Response/Containment measures
- ◆ Testing and Cleanup measures

##### **F. Temporary Use Permit (TUP)**

- ◆ List needs for additional space outside ROW
- ◆ Proposed use
- ◆ Dimensions
- ◆ Specify duration of TUP (include time to rehabilitation site)